Supreme Court U. S.
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JAMES H. McKENNEY,
Clerk.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1903.

No. 198.

THE UNITED STATES, Appellant,

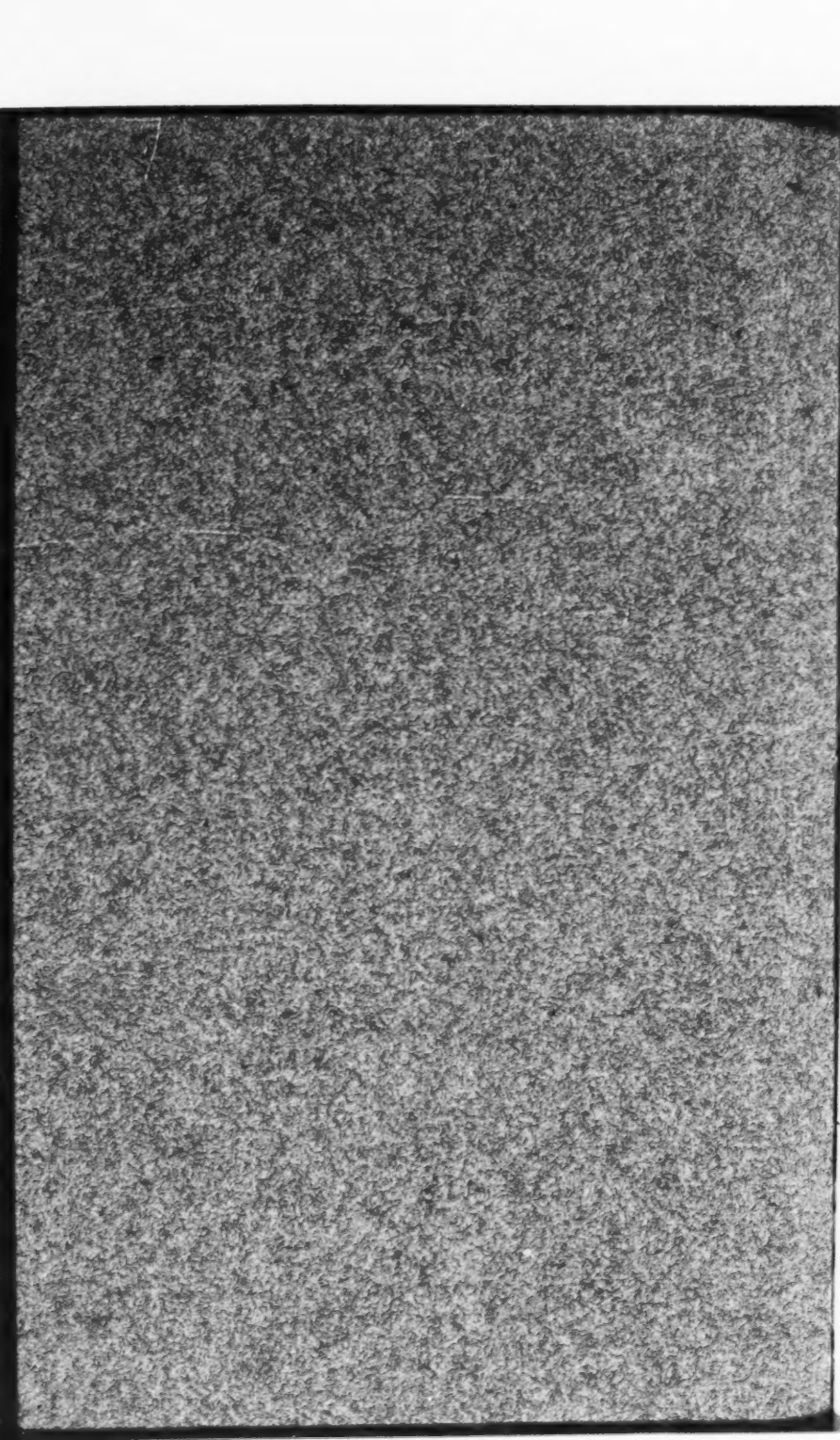
v.

CHARLES H. GILDERSLEEVE.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR APPELLEE.

GEORGE A. KING,
WILLIAM B. KING,
Attorneys for Appellee.



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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1903.

THE UNITED STATES, *Appellant*,
v.
CHARLES H. GILDERSLEEVE. } No. 198.

BRIEF FOR APPELLEE.

I. STATEMENT OF THE CASE.

This is an appeal from a judgment of the Court of Claims, allowing the claimant and appellee certain fees claimed by him as clerk of the District Court of the First Judicial District of the Territory of New Mexico.

The findings of the Court of Claims will be found in the record (pp. 2–4). They are correctly summarized in the appellant's brief (pp. 1, 2), except that the last paragraph of the statement of the case (p. 2) should be qualified by stating that Item 3, issuing subpœnas for jurors and attaching seals thereto, was allowed only as to the issuance of the subpœnas, and that the claim for affixing seals thereto was disallowed.

II. BRIEF OF ARGUMENT.

1. Preparing Transcript in Reavis Case.

The findings show that the service in the preparation of this transcript was performed by the claimant as clerk of the District Court of the First Judicial District of the Territory of New Mexico.

The proceeding, being in a criminal case, was properly taken at the expense of the Government.

Decisions of This Court.

The question has been in substance decided by this court in several cases.

In *United States* v. *Van Duzee* (140 U. S. 169, 173) it is said:

"There is no other statutory provision for carrying out the constitutional obligation of the government to inform the prisoner of the nature and cause of the accusation, or for summoning witnesses, or procuring the assistance of counsel, except that by § 878 indigent defendants are entitled to have their witnesses subpœnaed at the expense of the government. There is, however, no general obligation on the part of the government either to furnish copies of indictments, summon witnesses or retain counsel for defendants or prisoners. The object of the constitutional provision was merely to secure those rights which by the ancient rules of the common law had been denied to them; but it was not contemplated that this should be done at the expense of the government. We have no doubt, however, of the power of the court to order a copy of the indictment to be furnished upon the request of the defendant, and at the expense of the government; and, when such order is made, the clerk is entitled to his fee for the copy."

It is also in principle sustained by what is said in *United States* v. *Barber* (140 U. S. 164, paragraphs 3, 4, pp. 166, 167) in regard to the affidavits of justification of sureties in recognizances of persons accused of crime.

Again, in *United States* v. *Allred* (155 U. S. 591, 593, 594) it said:

"1. All these items, except the ninth, relate to fees claimed to be authorized by a rule of the court requiring the service to be performed, and, therefore, allowable within the case of *United States* v. *Van Duzee*, 140 U. S.

169, 173. In that case we held, in reference to clerks' fees, that an order of the court requiring a service to be performed was sufficient authority as between the clerk and the government for the performance of the service, and for the allowance of the proper fee therefor. No question is made but that the services in question were performed in obedience to such an order."

Decisions of Inferior Federal Courts.

Several decisions of inferior Federal Courts assert the same principle.

In the case of *In re Clerk's Charges for Services Rendered in Election Cases Removed to United States Court, etc.* (5 Fed. Rep. 440), it was held that the clerk is entitled to recover from the Government his fees for services on the removal of election cases from a State to a Federal Court under Revised Statutes, Section 643, and that it was not within the option of the clerk to refuse to perform the services required by that section unless his fees for doing so were paid by the defendant petitioner for the removal of the cause.

The court said (pp. 440, 441):

"With regard to the first point, it may be observed that the clerk is the only Federal officer of court not paid in part by an annual salary from the government. His compensation is limited, and fixed by the fee bill of 1852, now Section 828, U. S. Rev. St. There is no provision to be found therein requiring the clerk to perform gratuitous services on behalf of the government, nor would it be just that he should be required to do so, unless a small annual salary were given him, as in the marshal's and district attorney's cases."

So, too, it was said in *Goodrich* v. *United States* (42 Fed. Rep. 392, 394), citing the case just quoted:

"The fees for making transcripts required by section 10 of the act approved March 3, 1887 (24 U. S. St. 507),

when ordered by the district attorney, are chargeable to the United States."

In *Butler* v. *United States* (87 Fed. Rep. 655, 666, 667) the court said, citing and following the decision of this court in *United States* v. *Van Duzee* (140 U. S. 169, 173) above quoted:

"In this case the witnesses were sworn during the progress of a trial, and in accordance with the order of the judge who was holding the court, and not upon a request which was addressed to the clerk by the defendant therein, as seems to have been assumed by the accounting officers. The witnesses were for both parties, and were sworn together; and they were witnesses in a public prosecution, instead of a civil action between private individuals, and the fees for swearing them are a part of the costs of the general administration of justice, which are payable by the government. It was not optional with the clerk to swear these witnesses or not. When a defendant applies to the clerk to make an affidavit before him, he can require his fee at the time or before the service is rendered, and, failing to do so, it is his loss. But he can not arrest the proceedings in a criminal trial until his fees for swearing witnesses are paid or secured. He can not decline to swear them because payment is refused. In many cases the witnesses for the defendant are brought into court at the expense of the government, because the defendant is unable to procure their attendance. It is the duty of the clerk to comply with the order of the court, and swear all the witnesses in accordance therewith. Their testimony is required by the court for its own information concerning the facts of a case, and not because the defendant is interested in having them sworn. And the clerk is entitled to his fees for services rendered in accordance with the order and practice of the court."

The Defense Considered.

The principal defense to this claim (Brief for Appellant, pp. 3–5) is that the provision of Revised Statutes, Sec-

tion 878, as to the fees to be paid by the United States in cases of indigent defendants is exclusive of all other costs and charges. But this court did not so construe it in *United States* v. *Van Duzee*, above quoted, nor is there any ground for regarding such as the intention of Congress. That section was originally enacted in 1846, at a time long before writs of error were generally allowed by the laws of the United States in criminal cases. Its terms can not safely be stretched to imply a prohibition against the payment of any other costs and fees, which, but for the provisions of this section, would be chargeable to the United States.

It may be presumed that the allowance of a writ of error from the Supreme Court to the District Court of the Territory is permitted by the statute because it is regarded as for the interest of public justice that the judgments of the inferior courts of the Territory shall be reviewed by the Supreme Court of the Territory. (Revised Statutes, Sec. 1869.) It is not a mere personal privilege of the defendant. It can not justly be denied to a defendant lacking means to pay for the services of the clerk of the District Court in the preparation of the transcript. Neither, on the other hand, is it just to deprive the clerk of compensation for his services. Indeed it may not unfairly be assumed that in the preparation of so voluminous a transcript as that charged for in the present case, the clerk would actually be required to expend his own money for the benefit of the Government unless the fees for the preparation of the transcript are payable by the Government. He would probably not have the time in connection with his own duties to prepare the transcript personally, and would have to employ and pay a copyist to do the work.

Both on principle and authority, therefore, this item was rightly allowed by the Court of Claims.

2. Preparing and Filing Affidavits of Poverty.

The finding of the Court of Claims, Paragraph 2, page 4, on this item, styles these "similar affidavits of various Defendants to their Poverty." These were affidavits of defendants in criminal cases to their inability from povety to pay the costs of their defense. As such, they are clearly allowable under authority cited under the previous item.

The following remarks in *Butler* v. *United States* (87 Fed. Rep. 655, 667), a part of which has been quoted under the preceding item, apply more specifically to the item now under consideration:

"The fees which are claimed for filing and entering affidavits for indigent defendants were taxed and charged against the Government, under a provision of Section 828, Rev. St., which is as follows: 'For filing and entering every declaration, plea, or other paper, ten cents.' These affidavits were filed and entered because the court ordered the clerk to file and enter them. They were presented to the court before they were filed and entered by the clerk. They would not have been filed and entered by the clerk unless the court had ordered him to file and enter them. They were filed and entered by the clerk as the foundation of the order of the court which was made upon them. The order of the court to file and enter them, and to issue subpœnas for the witnesses named therein, was a single and indivisible act. It is conceded by the accounting officers that a clerk is entitled to his fee for entering an order of the court for summoning the witnesses (Locke's Case, 2 Dec. Comp. 578), but that he is not entitled to his fee for filing and entering the affidavit on which the order is founded (Brooks' Case, *Id.* 224). He is just as much entitled to his fee for one service as the other, and he is entitled to his fee for both services on precisely the same grounds. The filing and entering of the affidavit, and the entry of the order thereon, are parts of the same transaction."

In *Goodrich* v. *United States* (42 Fed. Rep. 392, 395) the court said:

"The fee for entering order appointing attorney to defend a poor prisoner is chargeable to the United States."

3. Issuing Subpoenas For Jurors.

This item was (record, p. 4):

"3. Issuing 122 subpœnas for grand and petit jurors, by order of the court, at 50 cents each $61.00
Seals on same, at 40 cents . . . . . 48.80."

The court below allowed only the first branch of this item, amounting to $61, but disallowed the charges for seals.

The brief for the United States seems to assume (p. 9) that the court below allowed for the seals; but the conclusion of law (foot of p. 4) shows, in connection with an addition of the various items, that the charge for seals was not allowed.

The only question under this item, therefore, is whether the claimant as clerk was entitled to be paid for the subpœnas issued for grand and petit jurors.

A similar charge was sustained in *Martin* v. *United States*, (26 C. Cls. 160, not 23 C. Cls. 160 as twice stated in the brief for the United States, pp. 9, 10).

There, the court referring to the decision of this court in *United States* v. *Jones* (134 U. S. 483), said (p. 163):

"The decision of the Supreme Court relates exclusively (in the understanding of this court) to the *onus probandi*. Where the right to compensation depends upon a fact, where the only question is whether the service was rendered, or whether it was necessary, or whether it was required by the court, the approval of the account makes it evidence *prima facie*."

And with specific reference to a charge like this (pp. 166, 167):

"19. This item is for copies of subpœnas made by the clerk for service by the marshal, and for attaching to each a certificate under the seal of the court. For the former service, the copy, the fee is 20 cents; for the latter services, 35. The service of a subpœna in Virginia is by showing the witness the original and giving him a copy. The copy is but a memorandum for the convenience of the witness, telling him when and where he must appear. The authority is in the original, which, seeing, he can not question. Adding an official certificate, under seal, to the copy adds nothing to it of substance, and conveys no additional information to the witness. For 208 copies of subpœnas the claimant is entitled to recover $41.60. The remainder of the item for certificates and seals, $72.80, is overruled."

This decision covers the present case, and fully justifies the allowance of this item.

CONCLUSION.

Double charges are allowed to officers in New Mexico by the act of August 7, 1882 (22 Stat. L. 344), construed and enforced by the Court of Claims in *McGrew* v. *United States* (23 C. Cls. 273). No objection is made on behalf of the United States to the rate charged in this case, which, in accordance with the act of 1882, is twice that fixed by Revised Statutes, Section 828.

The judgment of the Court of Claims should be affirmed.

GEORGE A. KING,
WILLIAM B. KING,
Attorneys for Appellee.

CLERK'S OFFICE 1851

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 199.

THE UNITED STATES, APPELLANT,

vs.

MARY K. WHEELER, ADMINISTRATRIX OF STEPHEN WHEELER, DECEASED.

FILED JANUARY 21, 1903.

No. 525.

MARY K. WHEELER, ADMINISTRATRIX OF STEPHEN WHEELER, DECEASED, APPELLANT,

vs.

THE UNITED STATES.

FILED DECEMBER 30, 1903.

APPEALS FROM THE COURT OF CLAIMS.

(18794 AND 19176.)

18520

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 199.

THE UNITED STATES, APPELLANT,

vs.

MARY K. WHEELER, ADMINISTRATRIX OF STEPHEN WHEELER, DECEASED.

APPEAL FROM THE COURT OF CLAIMS.

INDEX.

	Original.	Print.
Petition	1	1
Exhibit A.—Statement of account	4	2
Suggestion of death of claimant and substitution of administratrix	9	6
Traverse	9	6
Findings of fact	10	7
Conclusion of law	14	10
Judgment	15	10
Defendant's motion for new trial	16	10
Order overruling motion for new trial	16	11
Application of defendant for appeal	17	11
Order allowing appeal of defendant	17	11
Application of claimant for appeal	18	11
Order allowing appeal of claimant	18	11
Clerk's certificate	19	11

1 In the Court of Claims.

STEPHEN WHEELER
vs.
THE UNITED STATES. } No. 20866.

Petition. Filed August 18, 1897.

To the honorable judges of the Court of Claims:

Your petitioner, Stephen Wheeler, a citizen of the United States, and a resident of Fort Smith, in the State of Arkansas, respectfully shows:

That from the 18th day of August, 1891, to the 31st day of March, 1897, he was clerk of the United States dist. & cir. courts and commissioner of the circuit court of the United States for the western district of Arkansas, duly qualified, and acted as said clerk and commissioner.

That your petitioner presented to the accounting officers of the
2 Treasury for payment his accounts for services as said clerk from the 18th day of August, 1891, to the 30th day of March, 1897, and his accounts for services as said commissioner from the 1st day of January, 1892, to the 31st day of March, 1892, sworn to and duly approved by the court, as required by the act of February 22, 1875, 18 Stat. L., 333; that in the settlement of said accounts the accounting officers disallowed and refused payment of fees for the following services, as per Exhibit "A," herewith attached and made a part of this petition.

Petitioner claims that, in accordance with the provisions of sections 828 and 847 of the Revised Statutes of the United States, he is entitled to be paid by the United States for each of the services performed by him as aforesaid and approved and allowed by the court; and though his accounts therefor have been duly presented to the accounting officers of the *the* Treasury for payment of said fees, and although payment of the same has been repeatedly demanded, yet no part of the same has been paid to him, nor to anyone for him, nor has any part of the same been allowed to him in any way, as a credit or set-off, by any officer or department of the United States; but, on the contrary, allowance and payment thereof has been refused, although his accounts therefor were duly presented to and approved by said court in accordance with law.

Your petitioner further avers that no assignment or transfer of said claim, or any part thereof, has been made by him, and that he is the lawful owner thereof; that his whole compensation as clerk, if said fees were added, would not exceed the maximum compensation of $3,500 for any one year.

3 Wherefore your petitioner prays judgment against the defendant for $1,436.75.

STEPHEN WHEELER.

By his attorney,
CHARLES C. LANCASTER,
Washington, D. C.

DISTRICT OF COLUMBIA,
County of Washington, ss:

Before me, a notary public in and for the District of Columbia, personally appeared Charles C. Lancaster, who, being duly sworn, deposes and says that he is the attorney for the petitioner named in the foregoing petition, and that he is authorized by warrant of attorney, duly executed by said petitioner and filed herewith, to verify said petition, and petitioner is justly entitled to the amount therein claimed from the United States, after allowing all just credits and set-offs, and that the facts therein stated are true to the best of his knowledge and belief.

CHARLES C. LANCASTER.

Subscribed and sworn to before me this 18th day of August, 1897.

[SEAL.] WILLIAM H. BADEN,
Notary Public, D. C.

4 EXHIBIT A.

UNITED STATES OF AMERICA, *Dr.:*

To Stephen Wheeler, clerk of the district and circuit courts of the United States and commissioner of the circuit court of the United States for the western district of Arkansas, for services rendered on behalf of the United States in various criminal cases from August 18, 1891, to March 31, 1897, to wit:

Fees of clerk.

Item 1. For affixing seals of court to copies of mittimus to be delivered to jailers by U. S. marshal with prisoners, at 20 cents each, disallowed, as follows:

Report 132,636, item 1	$11.60

Item 2. For filing and entering separate accounts of U. S. marshal for fees and disbursements, at 10 cents each, disallowed, as follows:

Report 132,636, item 3	$35.70
" 134,779, item 1	59.60
" 156,664, item 6	32.80
	128.10

Item 3. For administering oaths to witnesses to testify in various cases on trial, by order of the judge, at 10 cents each, disallowed, as follows:

Report 132,636, item 6	$1.00
" 139,689, item 1	8.20
" 142,912, item 1	32.00
" 142,913, item 1	3.80
" 146,373, item 3	7.10
" 148,642, item 2	6.60
	58.70

Item 4. For administering oaths by order of the court to certain persons summoned to serve as grand and petit jurors to test their qualifications to serve as jurors, at 10 cents each, disallowed, as follows:

Report	18,150, item 4	$8.50
"	22,810, item 2	8.40
"	24,764, item 1	2.30
"	27,367, item 2	7.80
"	28,301, item 2	7.00
		34.00

Item 5. For making certified copies of writ of venire for marshal to serve on persons selected to act as jurors, at 10 cents per folio, with certificate to each copy, at 15 cents each, disallowed, as follows:

Report	132,636, item 4	$18.75
"	156,664, item 3	20.00
"	7,538, item 4	20.00
		58.75

Item 6. For entering on docket orders of court opening and adjourning court each day, one folio each, at 15 cents per folio, disallowed, as follows:

Report	132,638, item 1	$9.90
"	137,820, item 4	22.20
"	139,689, item 3	17.70
"	142,912, item 4	23.40
"	142,913, item 5	22.50
"	146,373, item 5	23.10
"	148,642, item 5	23.10
"	150,287, item 1	13.80
"	154,646, item 3	18.30
"	156,324, item 1	22.80
"	158,782, item 1	21.60
"	1,563, item 2	21.60
"	7,510, item 7	23.40
"	7,529, item 6	18.60
"	9,302, item 2	23.40
		305.40

Item 7. For administering oaths, at 10 cents, and drawing jurats, at 15 cents, to affidavits of indigent defendants to have their witnesses summoned at the expense of the United States, disallowed, as follows:

Report	134,779, item 2	$21.25
"	135,114, item 2	3.00
"	142,912, item 2	3.25
"	142,913, item 2	1.50
"	146,373, item 2	1.75
"	148,642, item 1	1.75

Report	7,510, item 5	$0.75
"	7,538, item 1	2.85
"	28,301, item 5	.10
		36.20

Item 8. For filing applications of indigent defendants to have their witnesses summoned at the expense of the United States, at 10 cents each, and entering orders of court granting the same, at 15 cents per folio, disallowed, as follows:

Report	16,142, item 1	$7.20
"	17,187, items 1, 2	2.75
"	18,150, item 3	6.90
"	22,698, items 3, 4	3.00
"	22,810, items 1, 4	16.00
		35.85

Item 9. For drawing certificates to copies of sci. fa. to be served by the marshal on defendants according to the practice of the court, at 15 cents each, disallowed, as follows:

Report	134,779, item 3	$3.00

Item 10. For making dockets, indexes, taxing costs, &c., in cases where issue was joined by entering plea of not guilty and afterwards entering said plea withdrawn and entering plea of guilty, at $2.00 in each case, $1.00 in each case disallowed, as follows:

Report	134,779, item 4	$8.00
"	137,820, item 3	1.00
"	156,664, item 1	1.00
		10.00

Item 11. For making dockets, indexes, taxing costs, &c., in two separate contempt cases where the cause was either dismissed or judgment rendered without issue, $1.00 in each case charged and disallowed, as follows:

Report	2,089, item 3	$2.00

7 Item 12. For drawing certificates to certified copies of indictments and lists of jurors delivered to defendants indicted for capital offenses, according to the practice of the court, at 15 cents each, disallowed, as follows:

Report	135,114, item 3	$1.95
"	137,820, item 2	1.95
"	139,689, item 2	.15
"	146,373, item 1	6.15
"	148,642, item 4	.60
		10.80

Item 13. For drawing certificates to certified copies of orders of court for marshal to furnish meals to juries at the expense of the United States, at 15 cents each, disallowed, as follows:

Report	135,114, item 3	$1.05
"	137,820, item 1	.90
"	139,689, item 2	.15
"	142,912, item 3	1.50
"	142,913, item 3	.45
"	146,373, item 4	1.05
"	148,642, item 3	1.20
		6.30

Item 14. For taking one acknowledgment of defendants and sureties to each recognizance, at 25 cents, disallowed, as follows:

Report	17,187, item 3	$1.75
"	18,150, item 1	17.25
"	22,810, item 3	18.50
"	28,301, item 4	8.25
		45.75

Item 15. For filing motion of defendant for a new trial, at 10 cents each, and entering orders of court overruling the same, at 15 cents per folio, disallowed, as follows:

Report	2,089, item 1	$1.00
"	7,510, item 4	.30
"	7,529, item 8	.60
"	9,302, item 1	.40
		2.30

8 Item 16. For making separate entries at different times on the docket of separate and distinct proceedings in various cases, consisting of separate pleadings and orders of court, one folio each, at 15 cents per folio, disallowed, as follows:

Report	132,636, items 2, 7	$0.45
"	7,529, items 1, 2, 3	.75
"	7,538, item 2	5.85
"	18,150, item 2	16.20
"	22,810, item 5	21.00
"	27,367, item 4	2.70
"	28,301, item 3	.75
		47.70

Item 17. For filing and entering separate bills of exception, assignments of error, petitions for writs of error; entering on docket orders of court thereon, entering on docket orders of court to stay judgments, issuing citations and writs of error and making copies with certificates, and

for making transcript for Supreme Court with certificate and seal, disallowed, as follows:

Report	16,142, item 4	$326.60
"	17,187, item 5	19.20
"	22,698, item 2	102.80
"	24,679, item 1	170.70
		619.30

Fees of commissioner.

Item 18. For administering oaths to 210 witnesses summoned to testify on hearing and deciding criminal charges in various cases where defendants were charged with offenses against the laws of the United States, at 10 cents each, disallowed, as follows:

Report	137,575, item 2	$21.00
	Total amount claimed	1,436.75

9 *II. Suggestion of the death of the claimant and substitution of administratrix.*

Now comes Mary K. Wheeler, by her attorney, and informs the court of the death of Stephen Wheeler, late claimant in the above-entitled ca se, and that she has been duly appointed administratrix of the estate of the said Stephen Wheeler, deceased, as appears by an authenticated copy of letters of administration on his estate, filed in case No. 20863, and the said Mary K. Wheeler, administratrix, by her attorney, now moves the court to be substituted in the place of said Stephen Wheeler, deceased, as party claimant, and that she be admitted to prosecute the suit.

Filed October 14, 1897.

C. C. LANCASTER,
Attorney for Claimant.

Allowed.

BY THE COURT.

OCTOBER 14, 1897.

III. Traverse. Filed May 15, 1902.

And now comes the Attorney-General, on behalf of the United States, and, answering the petition of the claimant herein, denies each and every allegation therein contained, and asks judgment that the petition be dismissed.

L. A. PRADT,
Assistant Attorney-General.
W.

Filed May 15, 1902.

This case having been heard by the Court of Claims, the court, upon the evidence, makes the following

FINDINGS OF FACT.

I.

The claimant, Mary K. Wheeler, a citizen of the United States and a resident of Fort Smith, in the State of Arkansas, is the administratrix of the estate of Stephen Wheeler, deceased, late of said city and State.

II.

From the 18th day of August, 1891, to 31st day of March, 1897, the said Stephen Wheeler was a clerk of the district and circuit courts of the United States and a commissioner of the circuit court of the United States for the western district of Arkansas, duly qualified and acting.

III.

During said period he rendered services as said clerk and commissioner on behalf of the United States and made up his accounts for the same, which were duly verified and presented to the United States court for approval in the presence of the district attorney, and orders approving the same as being just and according to law were duly entered of record; said accounts were then presented to the accounting officers of the Treasury Department for payment. Part was paid, but payment of items embraced in Finding IV was refused.

IV.

Fees of clerk.

Item 1. For affixing seals of court to 58 separate copies of mittimus, to be delivered to the jailers by the United States marshal with 58 prisoners committed to jail at various times by the court, as their authority to hold the prisoners, at 20 cents each..... $11.60

The clerk was ordered by the court to make certified copies, and the certificate is in the following form:

"I, Stephen Wheeler, clerk of the district court of the United States in and for the western district of Arkansas, hereby certify that the foregoing is a true and correct copy of the judgment, sentence, and order in the above-entitled cause as the same appears of record.

"In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at Fort Smith, in said district, this —— day of ———, 189—.

[SEAL.] "STEPHEN WHEELER, *Clerk.*"

Item 2. This item is abandoned.

11 Item 3. For administering oaths to 587 witnesses for defendants, to testify in various criminal cases on trial, by oral order of the judge, at ten cents each $58.70

Item 4. For admin stering oaths to 340 persons summoned to serve as grand and petit jurors before examination by the court to determine their qualifications for service as jurors, at ten cents each $34.00

These oaths were administered by order of the court. The person to whom the oath was administered was not a juror when sworn, but the oath was administered to test his qualification to serve as a juror. No charge is claimed for oath to a person after he has been accepted as a juror.

Item 5. For making certified copies of writ of venire facias for marshal to serve on persons summoned to serve as jurors, at ten cents per folio, with certificate to each copy, at 15 cents each:

(a) Copies $23.50
(b) Certificates 35.35

These certified copies were made by order of the court, to be served by the marshal on each person summoned, and the practice and charges were approved by the court.

Item 6. For entering on separate dockets of the common law and chancery courts the orders of court opening and adjourning court from day to day, one folio each at 15 cents per folio $305.40

The opening and adjourning orders in both records were ordered made by the court on each day that court was opened and adjourned, and each day's proceedings in both records were signed by the judge. These charges are for services rendered in the circuit court during the
12 calendar year 1895, for which year claimant received within $119.43 of his maximum compensation.

Item 7. For administering oaths, at 10 cents each, and drawing jurats, at 15 cents, to affidavits of indigent defendants to have their witnesses summoned at the expense of the United States under section 878, Rev. Stats $36.20

This service and charges were approved by the court and have always been allowed by the accounting officers of the Treasury until recently.

Item 8. For filing and entering written applications of indigent defendants to have their witnesses summoned at the expense of the United States, at 10 cents each, and entering orders of court granting the same, at 15 cents per folio..... $30.45

This service and charges were approved by the court; $1.80 of this amount is for services rendered in the circuit court during the calendar year 1895.

Item 9. For drawing certificates to copies of sci. fa. to be served by the marshal on defendants, at 15 cents each $3.00

It is the practice of this court to serve certified copies of process, and the services and charges have always been approved by the court. No order of court shown.

Item 10. For making dockets, indexes, taxing costs, etc., in cases where issue was joined by the plea of not guilty, and afterwards entering said plea withdrawn and entering plea of guilty, at $2.00 each $10.00

The cases having been finally disposed of.

Item 11. For making dockets, indexes, taxing costs, etc., in two separate contempt cases where the cause was either dismissed or judgment rendered without issue, $1.00 each..... $2.00

Item 12. For drawing certificates to copies of indictments and lists of jurors and witnesses delivered to the marshal
13 to be served on defendants indicted for capital offenses, as required by section 1033, Rev. Stats., at 15 cents each.. $10.80

Item 13. For drawing certificates to certified copies of orders of the court for marshal to furnish meals to jurors at the expense of the United States, at 15 cents each $6.30

No order of court shown.

Item 14. These charges having been paid are now abandoned.

Item 15. For filing and entering 17 written motions of indigent defendants, under section 878, Rev. Stats., for a new trial, at 10 cents each, and entering orders of court overruling the same, one folio each, at 15 cents per folio..... $2.30

$1.00 is for services rendered in circuit court during the year 1895.

Item 16. For making separate entries of orders of continuances and of recognizances on separate dockets in various cases, at 15 cents per folio..... $18.60

The practice of the court requires separate dockets for the entry of these court proceedings; 75 cents of this sum is for services rendered in the circuit court during the year 1895.

Item 17. For filing and entering separate bills of exceptions, assignments of error, petitions for writs of error, entering on docket orders of the court thereon, orders of court to stay judgments, issuing of citations and writs of error, and for making transcripts of record for the Supreme Court of the United States in certain capital cases under the act of February 6, 1889, at 10 cents for filing and entering each paper, and 15 cents per folio for entering orders and making transcripts..... $619.30

$326.60 is for services rendered in the circuit court during the year 1895. The defendant in each case filed with the clerk of the court
14 poverty affidavit stating his inability to pay the costs of the proceeding of the writ of error. The services were rendered by the direction of the court, and the charges have been approved by the court in the accounts of claimant, as required by the act of February 22, 1875.

Fees of commissioner.

Item 18. For administering oaths to 210 witnesses summoned to testify on hearing and deciding criminal charges in various cases where defendants were charged with offenses against the laws of the United States, at 10 cents each..... $21.00

The State law requires the testimony of witnesses under oath to be reduced to writing before justices of the peace.

CONCLUSION OF LAW.

Upon the foregoing findings of fact the court decides, as a conclusion of law, that the claimant recover judgment from the United States on items 1, 3, 5, 6, for the sum of $119.43; 7, 8, for the sum of $28.65; 10, 11, 12, 15, for the sum of $1.30; 16 for the sum of $17.85; 17 for the sum of $292.70, and 18, of Finding IV, in the sum of six hundred and sixty-nine dollars and eight cents ($669.08).

All other items not withdrawn or abandoned are disallowed.

BY THE COURT.

Filed June 2, 1902.

15 *V. Judgment of the court.*

MARY K. WHEELER, ADMRX. OF STEPHEN WHEELER, deceased, *vs.* THE UNITED STATES. } No. 20866.

At a Court of Claims held in the city of Washington on the second day of June, 1902, judgment was ordered to be entered as follows:

The court, on due consideration of the premises, find for the claimant, and do order, adjudge, and decree that the said claimant, Mary K. Wheeler, as administratrix of Stephen Wheeler, deceased, do have and recover of and from the United States the sum of six hundred and sixty-nine dollars and eight cents ($669\frac{08}{100}$).

BY THE COURT.

16 *VI. Defendants' motion for new trial. Filed October 2, 1902.*

Now come the defendants, by their Attorney-General, and move for a new trial in this case, on the grounds that there was error of law in the judgment of the court, in this: That judgment was rendered for the claimant on items 3, 5, 7, 8, 15, and 17, of the fourth findings made by the court, when judgment ought to have been rendered thereon for the United States.

L. A. PRADT,
Assistant Attorney-General.
P. M. ASHFORD,
Assistant Attorney.

Order of court. Filed December 1, 1902.

It is ordered by the court that the defendants' motion for a new trial in the above-entitled case be, and the same is hereby, overruled.

17 *VII. Application of defendants for and allowance of appeal.*

From the judgment rendered in the above-entitled cause on the second day of June, 1902, in favor of the claimant, the defendants, by their Attorney-General, on the second day of October, 1902, make application for, and give notice of, an appeal to the Supreme Court of the United States.

L. A. PRADT,
Assistant Attorney-General.

Filed October 2, 1902.

At a Court of Claims held January 13, 1903, the foregoing application for appeal was allowed as prayed for.

BY THE COURT.

18 *VIII. Application of claimant for and allowance of appeal.*

From the judgment rendered in the above-entitled cause, on the second day of June, 1902, the claimant, by her attorney, on the third day of October, 1902, makes application for, and gives notice of, an appeal to the Supreme Court of the United States.

An' the claimant assigns as errors of law:

First. The conclusion of law made by said court in disallowing items 4, 9, and 13, respectively, of claimant's Exhibit A to the petition on the facts found by the court.

Second. The refusal of said court to render judgment in favor of the claimant for the amounts claimed in said items.

CHARLES C. LANCASTER,
Attorney for Claimant.

Filed October 3, 1902.

At a Court of Claims held January 13, 1903, the foregoing application for appeal was allowed as prayed for.

BY THE COURT.

19 Court of Claims, Washington, D. C.

MARY K. WHEELER, ADMINISTRATRIX of Stephen Wheeler, deceased, *vs.* THE UNITED STATES. } No. 20866.

I, John Randolph, assistant clerk of the Court of Claims, hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, of the findings of fact and conclusion of law filed by the court, of the judgment of court, of the application of the defendants and

of the claimant, respectively, for the allowance of appeal to the Supreme Court of the United States, and of the order allowing same.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court of Claims this 17 day of January, A. D. 1903.

[SEAL.]

JOHN RANDOLPH,
Asst. Clerk Court of Claims.

(Indorsement on cover:) File No. 18794. Court of Claims. Term No. 199. The United States, appellant, vs. Mary K. Wheeler, administratrix of Stephen Wheeler, deceased. Filed January 21, 1903.